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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Application of Ameritech Michigan	)	CC Docket No. 97-137
Pursuant to Section 271 of the	)	
Telecommunications Act of 1996 to	)	
Provide In-region, InterLATA Services	)	
in Michigan	)	

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits this reply to the initial comments filed in response to Ameritech Michigan's ("Ameritech") application for authority to provide in-region, interLATA services in Michigan. As explained in CompTel's Opposition[1] and also below, this application is not a close case. Ameritech, like Southwestern Bell Communications, Inc. before it, requests interLATA entry well before it has fulfilled its part of the Section 271 bargain. Commenters, including the Michigan Public Service Commission ("MPSC") and the United States Department of Justice ("DOJ"), agree that Ameritech has not satisfied the competitive checklist, does not face sufficient competition for business and residential services, has not demonstrated that it will comply with Section 272's structural separation requirements, and has not shown that entry at this time is consistent with the public interest. Therefore, the Commission should deny Ameritech's application.

[1] Opposition of the Competitive Telecommunications Association ("CompTel Opposition"), filed June 10, 1997.

I. THE MPSC, DOJ AND NEARLY ALL OTHER COMMENTERS AGREE THAT AMERITECH HAS NOT FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST

In its initial comments, CompTel demonstrated that Ameritech has not yet implemented the so-called competitive checklist of Section 271(c)(2).[2] The defects are numerous. First, Ameritech is not actually providing to *any* carrier two of the checklist items -- unbundled switching and unbundled local transport -- which also are essential to local exchange competition through unbundled network elements.[3] Further, three of the checklist items offered by Ameritech do not satisfy the Act or the Commission's rules. Ameritech does not offer unbundled local switching in a manner that permits its user to provide exchange access services or that enables its user to utilize the routing instructions resident in the switch.[4] Ameritech refuses to comply with this Commission's orders that common transport, *i.e,* local transport using the same trunks Ameritech uses for its own local traffic, be made available as an unbundled network element.[5] Finally, Ameritech has not yet implemented and validated its ability to provide Operational Support Systems ("OSS") in a commercial environment or with objective performance criteria to measure service quality and parity with Ameritech's provisioning for its own purposes.[6] The record overwhelmingly supports CompTel's observations.

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[2] 47 U.S.C. § 271(c)(2)(B).

[3] CompTel Opposition at 10-14.

[4] *Id.* at 16-20.

[5] *Id.* at 20-22.

[6] *Id.* at 22-27.

A. The Record Confirms that Ameritech's Unbundled Local Switching and Unbundled Local Transport Elements Do Not Comply with the Checklist

All of the commenters addressing Ameritech's unbundled local switching ("ULS") and "shared" transport network elements agree that the elements as defined by Ameritech do not satisfy the Act or the Commission's rules.[7] The MPSC, for example, reports that it addressed the issue of shared transport in the context of the Ameritech/AT&T arbitration proceeding and concluded "that AT&T's proposal [for common transport using Ameritech's end office trunks] was appropriate and the prices resulting therefrom should apply."[8] Despite this order directly rejecting Ameritech's version of "shared" transport (which followed the FCC's *Interconnection Order* requiring common transport), Ameritech has manufactured an ambiguity and still refuses to make common transport available.[9]

DOJ similarly agrees that Ameritech's view of "shared" transport "is not supported by the 1996 Act, the [FCC's] regulations, or the rulings of the MPSC."[10] As DOJ notes, "the ability of new entrants to compete with incumbent LECs ("ILECs") by using combinations of network elements, *including the ILEC's shared transport networks*, is an important mode of entry provided by the 1996 Act that should increase the speed with which competitors can

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[7] *See, e.g.*, DOJ Evaluation at 10-19; MCI Comments at 27-28; WorldCom Comments at 13-29.

[8] MPSC Comments at 38.

[9] *Id.* at 39.

[10] Evaluation of the United States Department of Justice at 14 ("DOJ Evaluation").

enter the market."[11] Despite several orders rejecting Ameritech's position, Ameritech still refuses to provide common transport.

Turning next to unbundled switching, DOJ again concludes that Ameritech's legal position "is, in our view, not consistent with the 1996 Act's requirements as interpreted by the Commission's regulations."[12] Unless and until Ameritech enables purchasers of ULS to collect access charges "without restriction," DOJ concludes, the Commission may not grant Ameritech's application.[13] Importantly, as DOJ notes, the practical effect of Ameritech's denial of exchange access capabilities to ULS purchasers is to deter the purchase of ULS.[14] By defining the switching element in a way that no potential purchaser finds attractive or useful, Ameritech has impeded access to its local exchange network and delayed the introduction of competition for local services.[15]

B. The Record Confirms That Ameritech Has Not Met its Burden to Provide OSS to Requesting Carriers

The comments of the MPSC, DOJ and other participants confirm that Ameritech's OSS access falls short of the standard required by the Act and the Commission's rules. The

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[11] *Id.* (emphasis added).

[12] *Id.* at 16.

[13] *Id.* at 18. Importantly, Ameritech not only must *permit* ULS purchasers to provide exchange access, but it must give them access to the data necessary to identify and bill IXCs to whom access is provided.

[14] *Id.* (citation omitted).

[15] Moreover, Ameritech created the environment in which no entity has ordered unbundled switching by offering an element that is patently unreasonable. *See* CompTel Opposition at 13. Thus, the reason that Ameritech has failed to *provide* all of the checklist items (as required by Section 271) is entirely within its own control.

deficiencies fall into two categories.[16] First, Ameritech has not demonstrated that its systems are available to competitors in both the unbundled elements and resale contexts. Second, Ameritech has not agreed to performance standards for its OSS, thereby depriving the Commission of the information necessary to determine whether OSS is provided at parity with the BOC's own local telephone operations.

As to availability, Ameritech does not say -- because it cannot -- that *all* of the systems designed to provide access to OSS are available to competitors today. Instead, its brief is full of carefully crafted assertions intended to create the appearance of widespread OSS availability, but which fall short of actually claiming that they are available.[17] The comments confirm exactly what Ameritech tried so hard to avoid. For example, Brooks Fiber asserts that OSS systems are not available for its use in the ordering of unbundled loops, resulting in "a chaotic, largely manual set of procedures that are entirely inadequate to serve the legitimate needs of Brooks Fiber's customers."[18] Further, as the MPSC noted, Ameritech's systems require an "Access Service Request" ("ASR") interface for a loop order, but a separate, EDI interface to order number portability with the loop.[19] This problem, it appears, is unlikely to be resolved for at least the remainder of this year, and

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[16] *See, e.g.,* Brooks Fiber Opposition at 13-26; Teleport Comments at 11-13; Michigan Consumer Federation Comments at 4-8; LCI Comments at 14-25.

[17] *See* CompTel Opposition at 23-24.

[18] Brooks Fiber Opposition at 17.

[19] MPSC Comments at 19.

perhaps longer.[20] Without these interfaces even available now, it is impossible to judge whether they comply with the Act.

Even for those interfaces that are available, however, their adequacy is subject to substantial dispute. Brooks Fiber, TCG, and MFS (among others), each of which has significant direct experience with Ameritech's OSS, dispute the claim that Ameritech's OSS access is reasonable or practical in a commercial environment.[21] These and other experiences led DOJ to conclude in its evaluation that, while Ameritech has made some progress toward OSS deployment, "it has not yet fully complied with the competitive checklist's standard for the wholesale support processes necessary to provide adequate resale services and access to unbundled elements."[22] Because Ameritech has not met its burden of proof, the application should be denied.

The second primary deficiency in Ameritech's OSS is the lack of a standard by which the Commission can determine if Ameritech is providing OSS access at parity to that which the BOC's local exchange operations enjoy. Several commenters, including the MPSC and DOJ, agreed with CompTel that the lack of an agreed-upon standard for judging Ameritech's performance makes it impossible to determine whether Ameritech is providing OSS on a nondiscriminatory basis.[23] As the MPSC explained, "The primary problem in assessing

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[20] *Id.* at 20 (stating that Ameritech has "committed to migration to the industry standard" by the end of 1997).

[21] Brooks Fiber Opposition at 17-26; Teleport Comments at 11-13; WorldCom Comments at 35-42.

[22] DOJ Evaluation at 22; *see also, id.*, Appendix A.

[23] *See, e.g.*, DOJ Evaluation, Appendix A at A-11 (noting the lack of a "common language" to describe Ameritech's performance); MPSC Comments at 23-26.

Ameritech's compliance . . . is that, for the most part, sufficient performance standards do not exist . . .."[24] In many cases, Ameritech and new entrants do not even agree on *what* should be judged, much less how that performance would be measured.[25] Consequently, Ameritech relies on OSS goals that it established itself, without any explanation other than that it is Ameritech's "judgment" that these goals are appropriate.[26]

Obviously, the Commission must apply some standard to determine whether Ameritech is providing OSS at parity. CompTel believes that the appropriate standard should be developed through a rulemaking proceeding, and it has asked the Commission to conduct an expedited rulemaking on this subject.[27] Nevertheless, regardless of how the appropriate substantive standard is to be developed, Ameritech has not provided the Commission with the comparative information necessary to evaluate its performance. Accordingly, the Commission must deny the application based upon the record now before it.

II. THE RECORD ALSO CONFIRMS THAT AMERITECH HAS NOT MET ITS BURDEN WITH RESPECT TO THE OTHER REQUIREMENTS OF SECTION 271

Ameritech's refusal to develop unbundled switching, unbundled transport and operational support systems that comply with the Act is a sufficient basis upon which to deny the application. Because the Commission must make a specific finding of compliance with respect to the competitive checklist, and the record precludes it from making that finding,

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[24] MPSC Comments at 23-24.

[25] *Id.* at 24.

[26] *Id.* at 25.

[27] *See* CompTel Opposition at 26-27 (citing LCI/CompTel Petition for Expedited Rulemaking, CC Docket No. 96-98, filed May 30, 1997).

Ameritech's application must be denied, even if one assumed, *arguendo*, that Ameritech satisfied the remaining provisions of Section 271. Indeed, given the obvious nature of Ameritech's failure to satisfy the checklist, the Commission need not even reach the other aspects of Section 271's requirements.

The deficiencies in Ameritech's showing with respect to the actual competition standard of Section 271(c)(1)(A), the structural separation requirements of Section 272, or the public interest test are adequately explained in CompTel's Opposition and the initial comments of a number of other parties,[28] and CompTel will not burden the Commission with a detailed recitation of these deficiencies. However, one issue bears further discussion.

Ameritech, with support from its sister BOCs, BellSouth Corporation and SBC Communications, Inc., contends that Brooks Fiber's minimal level of entry in the local services market in Michigan is sufficient to demonstrate that it faces actual competition in Michigan.[29] The BOCs appear to contend that service to even one single business customer and one single residential customer is sufficient to permit the BOC to enter the interLATA market state-wide. This contention cannot be what Congress intended with either Section 271(c)(1)(A) or the Commission's public interest test.

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[28] CompTel Opposition at 27-46; *see, e.g.,* Comments of Michigan Attorney General Frank J. Kelley at 3 (entry is not in the public interest); AT&T Comments at 32-50 (Ameritech has not satisfied the facilities based competitor, structural separation, or public interest tests); Brooks Fiber Opposition at 35-42 (Ameritech has not satisfied the structural separation or public interest tests); Time Warner Comments at 23-30 (entry is not in the public interest); WorldCom Comments at 45-46 (Ameritech is not complying with the structural separation requirements).

[29] Ameritech Brief at 7; BellSouth/SBC Joint Comments at 2 (asserting that Brooks Fiber alone satisfies Section 271(c)(1)(A)).

Whether it is applying the actual competition test or the public interest test, the Commission cannot ignore making a *qualitative* assessment of the degree and scope of local competition that Ameritech (or any other BOC applicant) faces. A token level of entry simply cannot provide a "tangible affirmation" of the Act's success, as Congress intended with Section 271's actual competition test. Moreover, unless the Commission makes an assessment of the competition facing the BOC, it cannot determine whether the local exchange and exchange access markets in a state are "fully and irreversibly opened to competition," the standard that DOJ applies to BOC entry.[30]

Therefore, the Commission's inquiry does not end with evidence that one or more of each class of subscribers are receiving service. As the BOCs frequently point out, Congress did not intend the Commission to apply a rigid "metrics" test to a BOC Section 271 application. This rejection of a strict quantitative test applies whether the proffered numerical standard is, for example, some percentage market share or, as the BOCs contend now, a single subscriber. Instead, the Commission should look past the numbers to judge the *qualitative* significance of the competitive entry. For example, because the authority requested is state-wide, it is appropriate for the Commission to ask whether competition is available in all areas of the state, or in only a limited geographic area. If competition is not available in significant portions of the state, the Commission must ask whether and how grant of interLATA authority would serve the interests of those customers for whom no competitive alternative is available. Similarly, the Commission should ask whether competing service is generally available to all subscribers in an area where competitors

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[30] *See* DOJ Comments at 29.

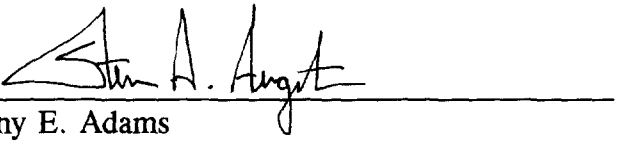
operate, or if competition is confined to only some customers (*e.g.*, multi-unit dwellings, but not single family residences). These and similar issues must be evaluated before the Commission can determine whether the nature and degree of competition is sufficient to satisfy the requirements of Section 271.

CONCLUSION

For the foregoing reasons, Ameritech has not met its burden under Section 271 of the Act. The Commission, therefore, cannot make the findings necessary to grant Ameritech interLATA authority, and it must deny the application. Ameritech is, of course, free to re-file for authority after it has satisfied each of the prerequisites enumerated in Section 271.

Respectfully submitted,

THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION

By: 

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July 7, 1997